

AMENDED IN SENATE JUNE 7, 2012

AMENDED IN SENATE JUNE 20, 2011

AMENDED IN ASSEMBLY MAY 11, 2011

AMENDED IN ASSEMBLY MARCH 31, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

## ASSEMBLY BILL

**No. 837**

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**Introduced by Assembly Member Nestande**

February 17, 2011

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~~An act to add Chapter 5.9 (commencing with Section 42360) to Part 3 of Division 30 of the Public Resources Code, relating to solid waste. An act to add and repeal Section 42357.6 of the Public Resources Code, relating to solid waste.~~

### LEGISLATIVE COUNSEL'S DIGEST

AB 837, as amended, Nestande. Solid waste: plastic food containers: *products*.

Existing law requires rigid plastic packaging containers sold or offered for sale in this state to meet specified criteria, including, but not limited to, that the container be made from 25% postconsumer material. Existing law prohibits a person, *on and after January 1, 2013*, from selling a plastic food or beverage container product that is labeled as “biodegradable,” “compostable,” “degradable,” or as otherwise specified, unless, at the time of the sale, the container product meets the applicable ASTM standard specification for compostable plastics, as or other specified, for the term used on the label certification requirements. These provisions are generally administered by the

*Department of Resources Recycling and Recovery, and a city, a county, or the state may impose civil liability for a violation.*

*This bill would require a manufacturer or supplier making an environmental marketing claim relating to the recycled content of a plastic food container product, as defined, to maintain certain information and documentation in support of that claim. The bill would require a manufacturer or supplier to furnish this information to any member of the public upon request or to provide the information and documentation by furnishing a link to a document on its Internet Web site. The bill would repeal these requirements on January 1, 2018.*

~~This bill would define terms and would prohibit a manufacturer or supplier from selling a plastic food container in this state that is advertised with a specific recycled content amount unless the manufacturer or supplier is able to provide certification of the stated recycled content in a format that is easy to understand and accurate. A manufacturer or supplier would be required to provide this information within 90 days from the date of a request by a member of the public or state agency or to post a link to a document on its Internet Web site containing this information.~~

~~The bill would authorize the state to impose civil liability for a violation of the bill's requirements and would require the penalties collected by the Attorney General to be expended by the Attorney General, upon appropriation by the Legislature, to enforce the above prohibition.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1     *SECTION 1. Section 42357.6 is added to the Public Resources*
- 2     *Code, to read:*
- 3     *42357.6. (a) For purposes of this section, "plastic food*
- 4     *container product" means a product made of plastic that includes*
- 5     *a tray, clamshell container, or other receptacle and that is used,*
- 6     *or intended to be used, to hold food.*
- 7     *(b) A manufacturer or supplier making an environmental*
- 8     *marketing claim relating to the recycled content of a plastic food*
- 9     *container product shall maintain information and documentation,*
- 10    *which shall be in written form in its records, of both of the*
- 11    *following in support of that claim:*

(1) *The recycled content for materials has been recovered or otherwise diverted from the solid waste stream either during the manufacturing process (preconsumer) or after consumer use (postconsumer).*

(2) *The recycled content claim conforms with the uniform standards for recycled content contained in the Federal Trade Commission Guides for the Use of Environmental Marketing Claims (16 C.F.R. Part 260).*

(c) *A manufacturer or supplier shall furnish the information and documentation that it is required to maintain pursuant to this section to any member of the public upon request or provide the information and documentation by furnishing a link to a document on its Internet Web site containing the information and documentation.*

(d) *This section does not limit the requirements of this chapter or any other provision of law.*

(e) *This section shall remain in effect only until January 1, 2018, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2018, deletes or extends that date.*

~~SECTION 1. Chapter 5.9 (commencing with Section 42360) is added to Part 3 of Division 30 of the Public Resources Code, to read:~~

~~CHAPTER 5.9. PLASTIC FOOD CONTAINER RECYCLED CONTENT~~

~~42360. The Legislature finds and declares that it is the public policy of the state that environmental marketing claims, whether explicit or implied, should be substantiated by competent and reliable evidence to prevent deceiving or misleading consumers about the recycled content of plastic food containers.~~

~~42361. For purposes of this chapter, the following definitions apply:~~

~~(a) "Advertise" means an advertisement, promotional material posted on the Internet, or any other sales or promotional material made available to the public.~~

~~(b) "Plastic food container" means a plastic package, including, but not limited to, a bottle, carton, clamshell container, or other receptacle, for sale or distribution in the state, that meets both of the following conditions:~~

~~(1) Is intended to be used to contain food items.~~

1     ~~(2) Has a relatively inflexible finite shape or form.~~

2     ~~(c) “Manufacturer” means a person, firm, association,~~  
3 ~~partnership, or corporation that produces a plastic food container.~~

4     ~~(d) “Postconsumer material” has the same meaning as defined~~  
5 ~~in Section 42301.~~

6     ~~(e) “Postindustrial material” means a material generated by an~~  
7 ~~original manufacturing and fabrication process.~~

8     ~~(f) “Recycled content” means the total amount of postconsumer~~  
9 ~~material and postindustrial material in a plastic food container,~~  
10 ~~expressed as a percentage of the total amount of material in that~~  
11 ~~plastic container.~~

12     ~~(g) “Sale” means a sale that is not a retail sale, as defined in~~  
13 ~~Section 6007 of the Revenue and Taxation Code.~~

14     ~~(h) “Supplier” means a person who purchases plastic food~~  
15 ~~containers for sale or distribution in this state.~~

16     ~~42362. (a) A manufacturer or supplier shall not sell a plastic~~  
17 ~~food container in this state that is advertised with a specific~~  
18 ~~recycled content amount unless the manufacturer or supplier is~~  
19 ~~able to provide certification of that claim in a format that is easy~~  
20 ~~to understand and accurate.~~

21     ~~(b) A manufacturer or supplier, upon the request of a member~~  
22 ~~of the public or a state agency, shall submit to that member or state~~  
23 ~~agency, within 90 days of the request, information and~~  
24 ~~documentation demonstrating compliance with subdivision (a).~~

25     ~~(c) A manufacturer or supplier is in compliance with this section~~  
26 ~~if it provides a link to a document on its Internet Web site~~  
27 ~~containing the certification information and documentation required~~  
28 ~~pursuant to subdivision (a).~~

29     ~~42363. (a) The state may impose civil liability in the amount~~  
30 ~~of five hundred dollars (\$500) for the first violation of this chapter,~~  
31 ~~one thousand dollars (\$1,000) for the second violation of this~~  
32 ~~chapter, and two thousand dollars (\$2,000) for the third and any~~  
33 ~~subsequent violation of this chapter.~~

34     ~~(b) Civil penalties collected pursuant to subdivision (a) shall be~~  
35 ~~paid to the Attorney General. The penalties collected pursuant to~~  
36 ~~this section by the Attorney General may be expended by the~~  
37 ~~Attorney General, upon appropriation by the Legislature, to enforce~~  
38 ~~this chapter.~~

39     ~~(c) The remedies provided by this section are not exclusive and~~  
40 ~~are in addition to the remedies that may be available pursuant to~~

1 Chapter 5 (commencing with Section 17200) of Part 2 of Division  
2 7 of the Business and Professions Code:  
3 (d) Costs incurred by a state agency in carrying out this chapter  
4 shall be recoverable by the Attorney General, upon the request of  
5 the state agency, from the liable person or persons.

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